



TRABUCO HIGHLANDS
Community Association

SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD

2009 JUN 26 A 11:45

Ben
Ne 11

June 24, 2009

John Robertus
Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Subject: Comment Letter, Tentative Order No. R-92009-2002 NPDES No. CAS0108740

Dear Mr. Robertus and Members of the Board:

This letter is written on behalf of Trabuco Highlands Community Association representing the owners of 811 homes in the City of Rancho Santa Margarita, California. Although the Tentative Order applies directly to the County of Orange as Principal Permittee and the many south Orange County city Co-Permittees, the community associations and the homeowners they serve are impacted as we must pay for the cost of implementing measures to assure that the permittees remain in compliance. The governing documents for our Association, and applicable laws, obligate the Board of Directors to take every action reasonably necessary to protect the health, safety, welfare, and the preservation of property values, of our homeowners. It is from this perspective that these comments are offered in response to the Tentative Order, No. R-2009-2002 NPDES No. CAS0108740.

1. Adoption of the Tentative Order will require the Association to incur added costs which will result in higher assessments charged to homeowners and trigger a chain-reaction of events that will have devastating consequences to the Association, our homeowners and the City as a whole.

Our community is reeling from the consequences of the current state of the economy, and an ever increasing number of the owners and members of our Association are facing financial collapse and the loss of their homes. Under the terms of the Tentative Order, as the City implements and enforces the mandatory requirements, the Association will be subject to fines and penalties and other administrative actions. In order to respond

to these new mandates and to avoid penalties and fines, our Association will be required to implement new administrative procedures and make capital improvements and renovations to existing infrastructure. *Our Association will be forced to increase dues and assessments charged to the homeowners to provide for these new services and improvements.*

These added costs will pose extraordinary hardship upon the homeowners in the City and members of our Association as there is an increasing likelihood that the homeowners cannot or will not pay increased assessments. The financial burdens imposed by the Tentative Order could be the tipping point in the financial operation of the Association, leading to catastrophic consequences.

The legal environment in which our Association operates prevents timely recovery of the added costs resulting from adoption of the Tentative Order from the owners we serve. Associations may not initiate meaningful collection remedies until the amount owed by an owner is more than \$1,800, or until after 12 months of unpaid delinquencies have accrued, whichever occurs first. Faced with ever increasing debt obligations, homeowners prioritize the debts they satisfy, and unfortunately, an increasing number are electing to delay payment of assessments. Owners are able to delay payment of assessments for several months and our Association is without meaningful remedy. Increasing the assessments to cover the added costs of compliance with the Tentative Order will increase the number of homeowners delaying payment. Delay in payment of assessments will result in dramatic negative consequences to the cash flow of the Association which relies exclusively upon assessment income for its operations.

In addition, applicable law prevents our Association from pursuing collection of unpaid dues and assessments when foreclosure has been initiated by prior recorded mortgage holders or when the owner declares bankruptcy. Association dues and assessments do not have priority in the collection process and an owner's obligation to pay can be extinguished by foreclosure of more senior lien holders or discharged through bankruptcy.

If the Tentative Order is adopted, buyers will be driven away from purchasing property in our city and our Association, choosing instead to purchase property elsewhere to avoid the threat of penalties and fines and increased assessments charged by the Associations to cover the added costs. Homes will sit empty and fall into disrepair, thus decreasing property values and threatening the safety and welfare of our community associations and the homeowners they serve.

Provisions in the governing documents for our community association as well as applicable law requires homeowner approval [by a majority of the voting power]for expenditures for capital improvements during the fiscal year which combined exceed 5% of the total annual budgeted expenses of the association. Adoption of the Tentative Order will necessarily require capital improvement expenditures by the Association to assure that the City maintains compliance. It is estimated that the capital improvements needed will exceed the 5% limit and thus require a majority of the entire voting power of the homeowners for approval. Even if the capital improvements needed to achieve compliance with the Tentative Order do not exceed the 5% limit, these costs combined with other capital improvement projects our Association would like to construct certainly will. History has shown that obtaining the consent by a majority of the homeowners for these expenditures is impossible. Faced with this dilemma we will be forced to defer needed capital improvement projects which will result in diminution of property values and decay and deterioration of the community.

The Association is required by law and provisions in its governing documents to prepare and distribute an annual budget. The budget in turn determines the amount of assessments charged the homeowners. The law applicable to the Association prevents increases in the regular assessments charged to owners without their approval to no more than 20% greater than the regular assessment for the Association's preceding year. Homeowner approval is also required for any special assessments which in the aggregate exceed 5% of the budgeted gross expenses of the Association for that fiscal year. If the Board or the City levies fines or penalties against the Association for violations of the Tentative Order, the Association may not be able to fully assess the membership to recover the cost without membership approval [a majority of a quorum and for purpose of this approval, quorum means 50% of the homeowners]. Insurance will not cover fines or penalties.

The costs of implementing and enforcing the Tentative Order will trigger a financial collapse such that we may have inadequate resources to continue our operations and could be forced to seek protection by court-ordered receivership, or bankruptcy.

The primary objective the Tentative Order is designed to achieve will be frustrated and delayed by the financial collapse of the organizations and homeowners who are most capable of making a positive difference in enhancing water quality. There is no evidence that in crafting the Tentative Order, the negative economic consequences were considered and properly addressed.

The Tentative Order should be revised to address and overcome negative economic consequences of implementation. The Tentative Order should support and

compliment, and not detract from, the financial stability of the City, our Associations and the homeowners they serve.

2. Adoption of the Tentative Order will unnecessarily create adversity and barriers to the implementation of successful strategies and will divert resources needed to achieve the ultimate objectives of NPDES frustrating and delaying the implementation of successful programs.

The Tentative Order will require the City to adopt a much more strident enforcement posture relative to our Association and our homeowners. The City will be forced to implement strategies using its police powers, rather than achieving favorable outcomes based upon education, mutual cooperation and alignment of systems and processes based upon alliances with our Association and homeowners. This new direction will drastically alter the climate of mutual cooperation and support homeowners and the Association and the City have worked so hard to achieve. This change will result in adversity and controversy which will unnecessarily delay and generate resistance to the process of making real progress in achieving the prime objective of enhancement of water quality.

Equally alarming is the change in relations between our Association and the homeowners we serve which will result from the adoption of the Tentative Order. The Association will be required to pass increased costs of compliance through to the homeowners. This will enhance the debt burden imposed upon the owners by our Association, and create unnecessary hardship and tension between the Association and homeowners. Many homeowners are already unable to meet their obligations to the Association and adding another layer of costs will result in more owners going into default on their obligations. Increasing dues and assessments in the current economic environment will create significant controversy, paralysis in the implementation process, and dysfunction within the community. The Association and homeowners will be caught in the cycle of ever increasing legal involvement to assure funding for the added costs which will result from adoption of the Tentative Order.

To survive financially, the Association will be forced to more aggressively pursue foreclosure and other legal remedies against delinquent homeowner members to collect unpaid assessments for these added costs. Those homeowners not in default will be required to pay even more to subsidize the debt of their delinquent neighbors.

The Tentative Order will result in a radically different relationship between the City and key community stakeholders. Increasing costs of implementing the new requirements of the Tentative Order will lead to the deterioration of the relationship

between the Association and our members. Adoption of the Tentative Order will sow the seeds of community unrest, pitting neighbor against neighbor and homeowners against the Association and the City against the Association, homeowners and other community interest groups. Instead of achieving compliance with the requirements of NPDES and the Clean Water Act by creating a strong foundation of mutual support and cooperation, compliance will be imposed upon resisting homeowners and other community stakeholders by pursuing costly legal and administrative enforcement, penalties and fines.

The Tentative Order should be revised to support cooperation among key community stakeholders including the City, community associations, homeowners and other interest groups.

3. The Tentative Order fails to acknowledge the successful efforts of the members of CAR to achieve compliance.

There is no evidence that activities in the City have resulted in any violations of the regulations adopted by the Board. There is no evidence that the operations of community associations or the homeowners in the City have negatively impacted the prime objectives of NPDES. To date there have not been any complaints, fines, or penalties charged against the City or any community associations in the City or homeowners they serve.

Beginning with the adoption of the current Order in 2002, we have worked with the City to develop and implement a successful program to achieve compliance with the standards that were set by the Board. We have worked with the City in a cooperative and supportive manner in achieving the mandates of the Board, which has proven to benefit the process and implementation of workable solutions. The City with our support and participation has developed a very successful educational and training program which has assured that all stakeholders are properly informed and empowered to meet the standards of the current Order. The Association and the City have adopted best management practices which have successfully achieved all of the mandates of the Board.

In spite of this record of accomplishment, the Tentative Order imposes new requirements without justification. Where is the evidence that the programs already in place in the City are not working?

Instead of encouraging the development of pilot programs and other management practices based upon the successful existing practices, systems and operations already implemented, the Tentative Order without justification and in an almost punitive fashion mandates new procedures and compliance to new standards which will be extremely

costly to achieve and which will expose the Association and our homeowner members to civil liability and other administrative penalties.

The Tentative Order should be revised to support pilot programs before setting new standards. Revisions should be made to support existing programs until those programs are shown to be ineffective. New standards and requirements should not be adopted without justification. New requirements and standards should not be adopted until there is evidence that existing programs and systems implemented by the City, the Association and the homeowners are unsuccessful.

4. Unequal Application of the permitting process and treatment under the law is not justified.

The requirements of the Tentative Order dramatically exceed those contained in all Orders adopted by the Board and all other regions of the California Water Quality Control Board and are inconsistent with the draft Order for North Orange County. There is no justification for the different and unequal application of the permitting process or the new draconian requirements included in the Tentative Order which if adopted will result in unfair and unequal treatment of the City and our Association. Why should owners living in community associations in North Orange County, San Diego County, or elsewhere in California benefit from demonstrably less restrictive standards and requirements in the Orders adopted for those regions than those imposed upon the homeowners living in the community associations within the City which will be subject to the Tentative Order if adopted? The homeowners in the City and our Association should not be singled out and forced to bear the cost and penalty of unequal treatment under the law. There is no justification for this unfair and unequal treatment.

The Tentative Order should be revised to be consistent with the Order adopted by the Board for San Diego County and with the draft Order of the California Water Quality Control Board, Santa Ana Region, North Orange County.

In conclusion, we would like to stress that revisions to the Tentative Order are required to assure fair and equal treatment under the law to the owners living in the City and the Association. Revisions are required to support existing programs which are working. New standards or requirements should not be adopted unless and until it has been shown that existing programs are ineffective. Revisions should be made to encourage use of pilot programs to develop and test new requirements and standards before implementation. Revisions are needed to support and encourage cooperation among community stakeholder groups and the City. The Tentative Order should be revised to address and overcome negative economic consequences of implementation.

